

STATUTORY CRIMINAL 4.08

JUSTIFICATION IN DEFENSE OF PROPERTY

A defendant is justified in using physical force against another in defense of property if a reasonable person in the situation would believe it necessary to prevent what a reasonable person in the situation would believe was [an attempt] [a commission] [a threat] [an apparent attempt] [an apparent threat] by the other person of [theft] [criminal damage] involving tangible movable property under the defendant's possession or control.

Defense of property justifies the use physical force only while the apparent danger continues, and it ends when the apparent danger ends. The force used may not be greater than reasonably necessary to defend against the apparent danger.

The use of physical force is justified if a reasonable person in the situation would have reasonably believed that immediate physical danger appeared to be present. Actual danger is not necessary to justify the use of physical force or deadly physical force in self-defense.

You must measure the defendant's belief against what a reasonable person in the situation would have believed.

If evidence was presented that raises the justification defense of property for [insert count number and name of offense], then the State has the burden of proving beyond a reasonable doubt that the defendant did not act with such justification. If the State fails to carry this burden, then you must find the defendant not guilty of the charge.

SOURCE: A.R.S. § 13-408 (statutory language as of October 1, 1978) and § 13-205 (statutory language as of April 24, 2006); *State v. Grannis*, 183 Ariz. 52, 60-61, 900 P.2d 1, 9-10 (1995).

USE NOTE: Use the language in brackets as appropriate to the facts.

"Physical Force" and "Deadly Physical Force" are defined in A.R.S. § 13-105 (Statutory Definition Instructions 1.05(12) & (28)).

"Theft" is defined in A.R.S. § 13-1801, *et seq.*

"Criminal damage" is defined in A.R.S. § 13-1601, *et seq.*

Justification defenses under chapter 4 of A.R.S. Title 13 are not affirmative defenses for crimes occurring on or after April 24, 2006. However for crimes occurring before this date, they remain affirmative defenses. In such cases, the court shall **delete** the last paragraph of this instruction and instruct on "affirmative defense" so as to inform the jury on the correct burden of proof. "Affirmative defense" is defined in A.R.S. § 13-205 (Statutory Instruction 2.05). An affirmative defense must be shown by a preponderance of the evidence. "Preponderance of the evidence" is defined in Standard Instruction 5b(2).

COMMENT: The Arizona Supreme Court has required that an instruction under A.R.S. §§ 13-404 and -405 must include a reference to the reasonable person standard. *State*

v. Grannis, 183 Ariz. 52, 60-61, 900 P.2d 1, 9-10 (1995). Because A.R.S. § 13-408 requires a reasonable person standard, the direction given in *Grannis* will likely apply in those situations.

A person may use deadly physical force in the defense of property only if it is used in the defense of the person, third persons or for crime prevention as described in A.R.S. §§ 13-405, -406 & -411. See A.R.S. § 13-408.

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